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AEROENLACES NACIONALES, S.A. DE C.V.
8 trading as VIVA AEROBUS

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 MARIA PRADO, an individual,

13 Plaintiff,

14 vs.

15 CITY OF LOS ANGELES, LOS
ANGELES WORLD AIRPORTS; VIVA
16 AEROBUS USA, LLC., a business
entity; and Does 1 through 100,
17 Inclusive,

18 Defendants.
19

Case No.:

**NOTICE OF REMOVAL OF
CIVIL ACTION PURSUANT TO
28 U.S.C. § 1441 ON THE
10 GROUNDS OF FEDERAL
QUESTION JURISDICTION
UNDER 28 U.S.C. § 1331**

20 TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
21 CENTRAL DISTRICT OF CALIFORNIA:

22 Defendant Aeroenlaces Nacionales, S.A. de C.V., trading as Viva Aerobus
23 (sued herein as Doe #3 and hereinafter referred to as “Viva Aerobus”), by and
24 through its attorneys of record, Condon & Forsyth LLP hereby removes this
25 pending action from the Superior Court of the State of California for the County of
26 Los Angeles to the United States District Court for the Central District of
27 California on the following grounds:

28 1. On October 27, 2023, there was filed in the Superior Court of the

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State of California for the County of Los Angeles the attached Complaint bearing Case No.: 23TRCV03604 in the records and files of that court. Plaintiff's Complaint alleged two causes of action for: (1) Liability for Dangerous Condition of Public Property, Pursuant to Government Code § 835, et seq.; and (2) Vicarious Liability for Wrongful Acts or Omissions by Public Entity Employees and/or Retention of Unfit Employer Cal. Gov't. Code § 815.2.

2. On February 7, 2024, Plaintiff filed a First Amended Complaint alleging two causes of action for: (1) Vicarious Liability for Wrongful Acts or Omissions by Public Entity Employees and/or Retention of Unfit Employer Cal. Gov't. Code § 815.2; and (2) Negligence.

3. On July 22, 2024, Plaintiff filed a Doe Amendment naming Aeroenlances Nacionales, S.A. de C.V., trading as Viva Aerobus, as Doe 3.

4. On August 15, 2024, Viva Aerobus demurred to the first cause of action of Plaintiff's First Amended Complaint on the grounds that Viva Aerobus is not a "public entity" as defined by Government Code, and therefore, cannot be liable under Government Code Section 815.2. On September 10, 2024, the Court sustained Viva Aerobus' Demurrer with leave to amend.

5. On September 18, 2024, Plaintiff filed its Second Amended Complaint. The Second Amended Complaint asserts three causes of action for: (1) Vicarious Liability for Wrongful Acts or Omissions by Public Entity Employees and/or Retention of Unfit Employer Cal. Gov't. Code § 815.2; (2) Negligence, and (3) Violation of Montreal Convention. The Second Amended Complaint asserts a single cause of action against Viva Aerobus for violation of the Montreal Convention. The Second Amended Complaint is the first time that the Montreal Convention cause of action was asserted against Viva Aerobus. Even though the Second Amended Complaint was filed on September 18, 2024, it was served on September 17, 2024. A true and correct copy of the Second Amended Complaint filed in the state court is attached hereto as Exhibit "A." Accordingly, the thirty

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(30) day time period for removal of an amended pleading, which it may first be ascertained that the case is one which is or has become removable as provided in 28 U.S.C. § 1446(b)(3) has not yet elapsed.

6. This is a civil action by plaintiff Maria Prado (hereinafter “Plaintiff”) against City of Los Angeles, Los Angeles World Airports, Viva Aerobus, and G2 Secure Staff LLC, Airport Terminal Management, Inc., and Airport Terminal Services, Inc. seeking damages for personal injuries she allegedly sustained on April 21, 2023, while embarking on a Viva Aerobus flight from Los Angeles to Guadalajara, Mexico at Los Angeles International Airport (“LAX”). Plaintiff alleges that while attempting to sit in a wheelchair, the wheelchair rolled backwards due to an unspecified malfunction, causing Plaintiff to fall. *See* Plaintiff’s Second Amended Complaint, Ex. A, p. 3, ¶¶ 10-14.

7. This is a civil action over which this Court has original jurisdiction based upon the existence of a federal question pursuant to 28 U.S.C. § 1331, in that Plaintiff’s lone cause of action against Viva Aerobus is for liability under the Montreal Convention, a treaty of the United States.

8. The Montreal Convention, formally known as the Convention for the Unification of Certain Rules for International Air Carriage by Air, May 28, 1999 (entered into force on November 4, 2003), *reprinted in* S. Treaty Doc. No. 106-45, 1999 WL 33292734, is the successor to the Warsaw Convention, (*Narayanan v. British Airways*, 747 F.3d 1125, 1127 & n.2 (9th Cir. 2014)) and unifies and replaces the system of liability that derives from the Warsaw Convention. *See Ehrlich v. American Airlines, Inc.*, 360 F.3d 366, 371 (2d Cir. 2004).

9. The Montreal Convention is applicable to all “international carriage of persons, baggage or goods performed by aircraft for reward.” Montreal Convention, Art. 1(1); *Narayanan*, 747 F.3d at 1127; *Chubb Ins. Co. of Europe S.A. v. Menlo Worldwide Forwarding, Inc.*, 634 F.3d 1023, 1026 (9th Cir. 2011).

10. This action, therefore, may be removed to this Court by Viva Aerobus

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pursuant to the provisions of 28 U.S.C. § 1441(a). *See e.g., Husmann v. Trans World Airlines, Inc.*, 169 F.3d 1151, 1152 (8th Cir. 1999) (Warsaw Convention); *Fadhliah v. Societe Air France*, 987 F. Supp. 2d 1057, 1064 (C.D. Cal. 2013) (Montreal Convention); *Jack v. Trans World Airlines, Inc.*, 820 F. Supp. 1218, 1226 (N.D. Cal. 1993) (Warsaw Convention); *Rosenbrock v. Deutsche Lufthansa, A.G., Inc.*, No. 6:16-CV-0003, 2016 WL 2756589, at *20 (S.D. Tex. May 9, 2016) (Montreal Convention); *Moran v. Am. Airlines, Inc.*, No. 10-80878-CIV, 2011 WL 13116533, at *6 (S.D. Fla. Feb. 17, 2011), *report and recommendation adopted*, No. 10-80878-CIV, 2011 WL 13116534 (S.D. Fla. Mar. 9, 2011) (Montreal Convention); *Singh v. N. Am. Airlines*, 426 F. Supp. 2d 38, 45 (E.D.N.Y. 2006) (Warsaw Convention); *Mateo v. JetBlue Airways Corp.*, 847 F. Supp. 2d 383, 386 (E.D.N.Y. 2012) (Montreal Convention); *Masudi v. Brady Cargo Servs., Inc.*, No. 12-CV-2391 DLI, 2014 WL 4416502, at *3 (E.D.N.Y. Sept. 8, 2014) (Montreal Convention); *Garrisi v. Nw. Airlines, Inc.*, No. 10-12298, 2010 WL 3702374, at *5 (E.D. Mich. Sept. 16, 2010) (Montreal Convention); *Schaefer-Condulmari v. U.S. Airways Grp., Inc.*, No. CIV.A. 09-1146, 2009 WL 4729882, at *9 (E.D. Pa. Dec. 8, 2009) (Montreal Convention).

11. According to the allegations in Plaintiff's Second Amended Complaint, at the time of the alleged incident on April 21, 2023, Plaintiff was traveling pursuant to a contract of carriage that provided for international carriage from Los Angeles to Guadalajara, Mexico.

12. The United States is a signatory to the Montreal Convention and the Montreal Convention entered into force in the United States on November 4, 2003.

13. Mexico is a signatory to the Montreal Convention and the Montreal Convention entered into force in the United States on November 4, 2003.

14. Accordingly, Plaintiff's lone cause of action against Viva Aerobus for liability under the Montreal Convention raises a federal question.

15. In addition to Viva Aerobus, the Second Amended Complaint names

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1 as defendants the City of Los Angeles, Los Angeles World Airports, and Does 1
2 through 100.

3 16. Viva Aerobus is informed and believes that defendants Los Angeles
4 World Airports and City of Los Angeles were served with process of the First
5 Amended Complaint in this action on April 9, 2024 and April 10, 2024,
6 respectively, and those entities filed an answer to the First Amended Complaint.
7 On May 22, 2024, Los Angeles World Airport and City of Los Angeles were
8 dismissed from this matter without prejudice. *See* Request for Dismissal, Ex B.
9 Despite the previous dismissal of Los Angeles World Airports and City of Los
10 Angeles, the Second Amended Complaint again named City of Los Angeles and
11 Los Angeles World Airports as defendants in this matter. The City of Los Angeles
12 and Los Angeles World Airports were again dismissed from this lawsuit on
13 October 1, 2024. A true and correct copy of this dismissal is attached hereto as
14 Exhibit C.

15 17. On October 7, 2024, Plaintiff filed Doe Amendments naming Airport
16 Terminal Management, Inc., as Doe 4, and naming Airport Terminal Services, Inc.
17 as Doe 5. Plaintiff has filed proofs of service reflecting that Airport Terminal
18 Services Inc. and Airport Terminal Management Inc. were served with process in
19 this action on October 9, 2024. Airport Terminal Services Inc. was terminated as a
20 corporation in California on February 20, 1996, and it is not a properly joined party
21 to this lawsuit. *See* Certificate of Surrender, Ex. D. As noted above, Airport
22 Terminal Management, Inc. ("ATM") was purportedly served with the summons
23 and complaint in this matter on October 9, 2024. ATM has not appeared in this
24 matter, and there is no indication that ATM has retained counsel for this matter.
25 Nonetheless, Viva Aerobus has made fourteen attempts to contact ATM to obtain
26 consent to remove this matter to federal court. Unfortunately, no one at ATM who
27 has been available to Viva Aerobus thus far has authority to consent to removal.
28 Viva Aerobus therefore requests permission to cure the defect concerning ATM's

1 consent to remove by obtaining joinder of ATM in Viva Aerobus' removal, on or
 2 before November 14, 2024. *See Destfino v. Reiswig*, 630 F.3d 952, 956-957 (9th
 3 Cir. 2011) (holding where all defendants who have been properly served have not
 4 consented in removal when notice of removal is filed, district court may allow
 5 removing defendants to cure defect by obtaining joinder of all defendants prior to
 6 entry of judgment).

7 **NOTICE PURSUANT TO**
 8 **FEDERAL RULE OF CIVIL PROCEDURE 44.1**

9 18. Viva Aerobus hereby gives notice that it may raise issues concerning
 10 the law of a foreign country in this matter.

11
 12 WHEREFORE, Aeroenlaces Nacionales, S.A. de C.V., prays that the above-
 13 entitled action now pending in the Superior Court of the State of California for the
 14 County of Los Angeles be removed to this Court.

15
 16 Dated: October 17, 2024

CONDON & FORSYTH LLP

17
 18 By: /s/ Andrew C. Johnson
 19 SCOTT D. CUNNINGHAM
 20 ANDREW C. JOHNSON
 21 CHRISTINA V. FERREIRO
 22 Attorneys for Defendant
 23 AEROENLACES NACIONALES,
 24 S.A. DE C.V., trading as VIVA
 25 AEROBUS
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